

AMENDED IN ASSEMBLY APRIL 16, 2007

AMENDED IN ASSEMBLY APRIL 9, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

## ASSEMBLY BILL

**No. 403**

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**Introduced by Assembly Member Tran**

February 15, 2007

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An act to amend Sections 954 and 955 of the Evidence Code, and to amend Section 12252 of the Probate Code, relating to attorney-client privilege.

### LEGISLATIVE COUNSEL'S DIGEST

AB 403, as amended, Tran. Attorney-client privilege.

(1) Under existing law, a client of a lawyer has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between the client and lawyer if the privilege is claimed by the holder of the privilege, a person who is authorized to claim the privilege by the holder, or the person who was the lawyer at the time of the confidential communication. However, the lawyer may not claim the privilege if there is no holder of the privilege in existence or if he or she is otherwise instructed by a person authorized to permit disclosure.

~~The California Constitution requires that a statute that would exclude relevant evidence in any criminal proceeding be enacted by a  $\frac{2}{3}$  vote.~~

This bill would ~~delete~~ *limit* the prohibition that the lawyer may not claim the privilege if there is no holder of the privilege in existence *to criminal proceedings*, and would provide that the privilege survives the death of a client, *except in a criminal proceeding*.

~~Because this bill would result in the exclusion of relevant evidence in a criminal proceeding, the bill would require a  $\frac{2}{3}$  vote.~~

(2) Under existing law, if subsequent administration of an estate is necessary after the personal representative has been discharged because other property is discovered or because it becomes necessary or proper for any cause, the court is required to appoint as personal representative the person entitled to appointment and to give notice of the hearing of the appointment to the person who served as personal representative at the time of the order of discharge and to other interested persons, as specified.

This bill also would require the court to perform these functions when subsequent administration of an estate is necessary after the personal representative has been discharged because disclosure is sought of a communication that is deemed privileged in the absence of a waiver by a personal representative, as specified.

Vote:  $\frac{2}{3}$ -majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 954 of the Evidence Code is amended to  
2 read:

3 954. (a) Subject to Section 912 and except as otherwise  
4 provided in this article, the client, whether or not a party, has a  
5 privilege to refuse to disclose, and to prevent another from  
6 disclosing, a confidential communication between client and lawyer  
7 if the privilege is claimed by any of the following:

8 (1) The holder of the privilege.

9 (2) A person who is authorized to claim the privilege by the  
10 holder of the privilege.

11 (3) The person who was the lawyer at the time of the confidential  
12 communication, but that person may not claim the privilege if he  
13 or she is otherwise instructed by a person authorized to permit  
14 disclosure *or, in a criminal proceeding, if there is no holder of the*  
15 *privilege in existence.*

16 (b) The relationship of lawyer and client shall exist between a  
17 law corporation as defined in Article 10 (commencing with Section  
18 6160) of Chapter 4 of Division 3 of the Business and Professions  
19 Code and the persons to whom it renders professional services, as  
20 well as between those persons and members of the State Bar

1 employed by that corporation to render services to those persons.  
2 The word “persons” as used in this subdivision includes  
3 partnerships, corporations, limited liability companies, associations,  
4 and other groups and entities.

5 (c) ~~The~~ *Except in a criminal proceeding, the* privilege described  
6 in subdivision (a) survives the death of the client.

7 SEC. 2. Section 955 of the Evidence Code is amended to read:

8 955. A lawyer who received or made a communication subject  
9 to the privilege under this article shall claim the privilege whenever  
10 he or she is present when the communication is sought to be  
11 disclosed, unless he or she is otherwise instructed by a person  
12 authorized to permit disclosure pursuant to Section 954.

13 SEC. 3. Section 12252 of the Probate Code is amended to read:

14 12252. If subsequent administration of an estate is necessary  
15 after the personal representative has been discharged because other  
16 property is discovered, disclosure is sought of a communication  
17 that is deemed privileged in the absence of a waiver by a personal  
18 representative under Article 3 (commencing with Section 950) of  
19 Chapter 4 of Division 8 of the Evidence Code, or because it  
20 becomes necessary or proper for any other cause, both of the  
21 following shall apply:

22 (a) The court shall appoint as personal representative the person  
23 entitled to appointment in the same order as is directed in relation  
24 to an original appointment, except that the person who served as  
25 personal representative at the time of the order of discharge has  
26 priority.

27 (b) Notice of hearing of the appointment shall be given as  
28 provided in Section 1220 to the person who served as personal  
29 representative at the time of the order of discharge and to other  
30 interested persons. If property has been distributed to the State of  
31 California, a copy of any petition for subsequent appointment of  
32 a personal representative and the notice of hearing shall be given  
33 as provided in Section 1220 to the Controller.

34 SEC. 4. ~~The~~ *Except in a criminal proceeding, the* amendments  
35 to Section 954 of the Evidence Code that are made by this act are  
36 intended to repeal any current prohibition against a lawyer claiming  
37 the lawyer-client privilege if there is no holder of the privilege in

- 1 existence, and specifically provide that the privilege survives the
- 2 death of the client.

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